

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**A.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Erie, PA, Employer**

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**Docket No. 09-249  
Issued: October 13, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 3, 2008 appellant filed a timely appeal from a September 26, 2008 merit decision of the Office of Workers' Compensation Programs finding that she received an overpayment in the amount of \$473.96 for which she was not at fault. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

**ISSUES**

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$473.96 during the period March 15 to August 2, 2008, when life insurance premiums for basic and optional life were not correctly deducted from her compensation and no deductions were made for postretirement life insurance; (2) whether the Office properly denied waiver of the recovery of the overpayment; and (3) whether the Office properly set the rate of recovery as \$245.00 per month.

## **FACTUAL HISTORY**

On July 18, 2007 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging that on February 8, 2007 she first realized that she had a right hip labral tear. She noted that it was not until June 19, 2007 that she realized this condition was employment related. By letter dated January 4, 2008, the Office accepted the claim for right hip labral tear and placed appellant on the periodic rolls for temporary total disability.

On April 29, 2008 the Office noted that appellant was paid wage-loss compensation for the period April 13 to May 10, 2008 in the amount of \$2,633.00. A deduction of \$70.00 was made for an optional life insurance premium based upon a coverage amount of \$49,219.00.

In an August 11, 2008 letter, the Office of Personnel Management (OPM) informed the Office that the final salary on which it based appellant's postretirement benefits was \$51,252.00.

In an August 20, 2008 memorandum, the Office noted that in addition to appellant's basic and optional life insurance being based on an incorrect salary, no deductions had been made for postretirement life insurance for the period March 15 to August 2, 2008. Based on appellant's salary of \$51,252.00, deductions for the period March 15 to August 2, 2008 should have been \$81.58 for basic life insurance, \$366.60 for optional life insurance and \$456.84 for postretirement basic life insurance, a total of \$905.02. The Office deducted \$78.56 for basic life insurance, \$352.50 for optional life insurance and nothing for postretirement life insurance. This resulted in an overpayment of \$473.96 due to an underdeduction for appellant's life insurance premiums.

By letter dated August 20, 2008, the Office informed appellant that an overpayment was created in the amount of \$473.96<sup>1</sup> for the period March 15 to August 2, 2008. It found that she was without fault in the creation of the overpayment. Appellant did not file a response.

By decision dated September 26, 2008, the Office finalized the overpayment in the amount of \$473.96 for the period March 15 to August 2, 2008 based on the underdeduction of postretirement life insurance. Although it found that appellant was without fault in the creation of the overpayment, it found that waiver of recovery of the overpayment was not warranted, as she did not respond to the preliminary determination. The Office set a monthly repayment amount of \$245.00 beginning September 28, 2008.

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<sup>1</sup> The Office informed appellant that this preliminary notice of overpayment was distinct and separate from the May 27, 2008 preliminary overpayment letter she had received concerning an overpayment in the amount of \$717.61 for the period March 17, 2007 to April 8, 2008. It noted that this overpayment was currently before the Branch of Hearings and Review as she had requested a precoupment hearing on overpayment for the period March 17, 2007 to April 8, 2008. Appellant completed an overpayment questionnaire on June 19, 2008 in response to the May 27, 2008 preliminary overpayment notice for the overpayment in the amount of \$717.61. The Board has jurisdiction to consider and decide appeals from final decisions of the Office. There shall be no appeal with respect to any interlocutory matter disposed of during the pendency of the case. 20 C.F.R. § 501.2(c); *Jennifer A. Guillary*, 57 ECAB 485 (2005).

### **LEGAL PRECEDENT -- ISSUE 1**

Under the Federal Employees' Group Life Insurance (FEGLI) Program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.<sup>2</sup> The coverage for basic life insurance is effective unless waived<sup>3</sup> and the premiums for basic and optional life insurance coverage are withheld from the employee's pay.<sup>4</sup> While the employee is receiving compensation under the Federal Employees' Compensation Act, deductions for insurance are withheld from the employee's compensation.<sup>5</sup> At separation from the employing establishment, the FEGLI insurance will either terminate or be continued under compensation status. If the compensationner chooses to continue basic and optional life insurance coverage, the schedule of deductions made will be used to withhold premiums from his or her compensation payments.<sup>6</sup> When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to OPM upon discovery of the error.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant received an overpayment in compensation. The evidence relevant to this issue includes an August 11, 2008 letter from OPM noting appellant's postretirement benefits was based on a salary of \$51,252.00 as of March 15, 2008, an August 20, 2008 memorandum to file and an April 29, 2008 computer printout noting that the optional life insurance premium based upon a coverage amount of \$49,219.00. The record establishes that there was an underdeduction for failure of the Office to properly deduct basic life insurance premiums from March 15 to August 2, 2008.

To determine the amount of the overpayment, the Office divided the number of compensation days from March 15 to August 2, 2008 (141) by 28 (to obtain the number of compensation payments for the period) and multiplied that amount by the basic life premium rate of \$16.20. This showed an underdeduction of \$81.58. It divided the number of compensation days from March 15 to August 2, 2008 (141) by 28 and multiplied that amount by the optional life insurance rate of \$72.80. This showed an underdeduction of \$366.60. The Office divided the number of compensation days from March 15 to August 2, 2008 (141) by 28 and multiplied that amount by the optional life insurance rate of \$90.72. This showed an underdeduction of \$456.84. Combined, these underdeductions from appellant's compensation amounted to \$905.02. For the period March 15 to August 2, 2008, the Office deducted \$78.56 for basic life insurance and \$352.50 for optional life insurance but did not deduct for postretirement insurance,

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<sup>2</sup> 5 U.S.C. § 8702(a).

<sup>3</sup> *Id.* at § 8702(b).

<sup>4</sup> *Id.* at § 8701.

<sup>5</sup> *Id.* at § 8707(b)(1).

<sup>6</sup> *Id.* at § 8706(b).

<sup>7</sup> *Id.* at § 8707(d); *see Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

resulting in a total of \$431.06. The difference is \$473.96. The Board will affirm the Office's September 29, 2008 decision on the amount of the overpayment.

On appeal, appellant alleges that she never received the preliminary overpayment notice dated August 20, 2008. The record supports that the Office's August 2, 2008 preliminary overpayment determination and accompanying overpayment questionnaire were sent to appellant's address of record and was not returned as undeliverable. Under the mailbox rule, it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.<sup>8</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(a) of the Act provides that, where an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): "Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience."<sup>9</sup>

Office regulations, at 20 C.F.R. § 10.438, state:

"(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by [the Office]. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

"(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver and no further request for waiver shall be considered until the requested information is furnished."<sup>10</sup>

### **ANALYSIS -- ISSUE 2**

Although appellant was found without fault in creating the \$473.96 overpayment, she bears responsibility for providing the financial information necessary to support a request for waiver. The Office requested that she provide financial information and submit any request for waiver within 30 days of the preliminary overpayment determination. Appellant did not respond within the 30-day time period. The Office noted that her failure to submit the requested information would result in the denial of waiver. As appellant failed to respond within 30 days,

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<sup>8</sup> *W.P.*, 59 ECAB \_\_\_\_ (Docket No. 08-202, issued May 8, 2008); *A.C. Clyburn*, 47 ECAB 153 (1995).

<sup>9</sup> 5 U.S.C. § 8129.

<sup>10</sup> 20 C.F.R. § 10.438.

as requested by the Office, under the implementing federal regulations, the Board finds that the Office properly denied waiver of the overpayment pursuant to 20 C.F.R. § 10.438(b).<sup>11</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act. Section 10.441(a) of the Office's regulations provide:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [the Office] the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, [the Office] shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.”<sup>12</sup>

### **ANALYSIS -- ISSUE 3**

The record reflects that appellant continues to receive wage-loss compensation under the Act. As noted, she failed to timely complete the financial documents. In cases where the claimant is being paid compensation on the periodic rolls and the claimant does not respond to the preliminary overpayment decision, a final decision should be issued without conducting a conference and the debt should be recovered from such benefits as quickly as possible.<sup>13</sup> Furthermore, without the appropriate financial documentation or overpayment questionnaire as required by 20 C.F.R. § 10.441, the Office was unable to consider his financial circumstances. The Board finds that as appellant provided no financial documentation, the Office did not abuse its discretion in following its regulations and deducting \$245.00 every four weeks from her continuing compensation payments.

### **CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment. The Board further finds that the Office properly denied waiver of the recovery of this overpayment and properly set the rate of recovery of the overpayment at \$245.00 from continuing compensation payments.

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<sup>11</sup> *Id.* at § 10.438(b) provides that failure to submit requested information within 30 days shall result in the denial of waiver of an overpayment. See *R.W. (A.T.)*, 59 ECAB \_\_\_\_ (Docket No. 07-1845, issued December 7, 2007); *Madelyn Y. Grant*, 57 ECAB 533 (2006).

<sup>12</sup> 20 C.F.R. § 10.441(a).

<sup>13</sup> See Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4(c)(2) (October 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 26, 2008 is affirmed.

Issued: October 13, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board